

REMARKS

The Office Action of May 12, 2009, has been carefully considered.

Claims 38-43 and 50-51 have been withdrawn from further consideration, and these claims have been canceled. In addition, Claims 47-49 have also been canceled.

Objection has been raised to the Information Disclosure Statement filed on September 28, 2006, as failing to provide a legible copy of each cited non-patent publication. In particular three references have been noted as not being provided.

While Applicant recognizes that these references are not in the file of the application, Applicant nevertheless believes that the references were submitted with the Information Disclosure Statement. Submitted herewith is a copy of the Information Disclosure Statement, together with a copy of the receipt card obtained when the Information Disclosure Statement was filed, showing receipt by the United States Patent and Trademark Office of 14 documents. Since 14 documents were listed on the Form PTO-1449, Applicant must conclude that the missing documents were lost after the filing.

A courtesy copy of these documents is submitted herewith. As evidence was submitted that the documents were timely submitted before the first Office action, appropriate consideration of these documents without payment of a fee is respectfully requested.

Claims 31-32, 35-37, 44-46 and 47-49 have been rejected under 35 USC 102(b) as anticipated by Stevens et al.

Claims 31 and 44 have been amended to better define the invention. Thus, the invention is directed to specimen container comprising a body having a defined circumference and

an opening for placement of the specimen, a lid to cover the opening, a label extending around the portion of the circumference of the body, defining thereby a viewing window into the body enabling viewing of the contents, and a brightly colored indicator band extending around the opening of the body, and sufficiently around the circumference that the colored indicator band is readily viewable from all sides of the container when the lid is placed over the opening and the container is placed in a specimen rack. While the term "brightly colored" is used in the present specification to define the indicator band, Applicant could expect that this term would be found to be indefinite if used in the claims. Accordingly, the color has been defined in Claims 31 and 44 as having a brightness greater than 40% and a saturation greater than 40%, as set forth in the specification in paragraphs [0063] and [0064] of the application as published. As set forth in paragraph [0065] of the published application, the indicator band may be fluorescent, and this is now recited in new Claim 52.

The Stevens et al reference clearly does not disclose the invention as now claimed. Stevens et al shows a specimen container having a label with a peel-off portion. The label extends around a portion of the circumference of the container, leaving a viewing window for the contents. This label clearly corresponds to the label defined in Claim 31.

Stevens et al does not disclose any indicator band which is brightly colored and disposed around the opening of the body, such band being viewable from all sides of the container when the container is placed in a specimen rack.

Applicant notes that specimen containers and their use have been known in the art for decades. The use of labels to indicate the contents of a specimen container is also well known in the art. However, the claimed invention further

defines an indicator band extending around an opening of the container which can be a sticker, printing, or part of the actual container body. This indicator band is a separate element from the label, although it may be formed as a part of the label.

Specimen containers are generally stored in upright container racks. Currently, no means are available for efficiently indicating priority or urgency of certain containers stored in these racks. The present invention overcomes this difficulty by providing a specimen container having a brightly colored and readily visible indicator band, that is visible when the container is stored in the rack, and which informs anyone handling the container that a specimen it contains requires urgent attention. The actual presence of the indicator band, and the band's easy visibility, is used to indicate urgency and not information written or printed on the label.

The indicator band of the invention is specifically placed around the opening of the container so that the band is easily visible from above and from all sides, especially when stored in container racks. This allows the laboratory technician to easily spot a container which has priority for testing, without having to individually remove each container from the rack to examine its label.

Stevens et al teaches away from this solution to the problem, as it is the label with the tear-off section that is used to link the container to a test request form. Even if the laboratory technician is aware from the test request form that a sample has priority, the sample cannot be located without examining each label.

The brightly colored indicator band of the invention eliminates the need for examination of each such label.

The advantage of the invention is terms of the practical

application of the invention are clearly explained by the results of a trial run described in paragraph [0118] and [0119] of the published application. Note that there was a 53% reduction in the failure rate by using specimen containers with the claimed priority indicator.

Withdrawal of this rejection is requested.

Claims 31-35, 44-45 and 47-49 have also been rejected under 35 USC 102(b) as anticipated by the Plasticware catalog and the VWR catalog.

The Plasticware catalog discloses only the sale of colored plastic centrifuge tubes. It may be assumed that such tubes have lids. However, as the tubes are colored in their entirety, Applicant does not believe there is any way to view tube contents, as in the case of the window defined according to the claimed invention which enables viewing of tube contents. Moreover, there is no disclosure of a label extending around a portion of the circumference of these tubes. Even if one were to place a label around the circumference, which is not disclosed or suggested by these references, one could not view the tube contents. Moreover, there is no disclosure or suggestion of using colored plastic tubes to indicate priority samples.

As to the VWR reference, the Office action alleges that the body of the container has etched markings, "which are viewed as either indicator bands printed on the body or a label applied to the body."

Applicant's representative has reviewed this reference, and cannot determine exactly what is shown in the drawing, the quality of which is poor. Assuming that the allegation in the Office action is correct and that the tubes are etched, it is likely that they are etched for the purpose of providing volume markings. These etchings do not constitute labels, and they certainly do not constitute labels placed around a

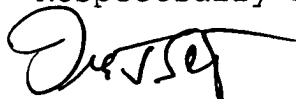
portion of the circumference. Moreover, these etchings also do not constitute a brightly colored indicator band placed around the opening of the tube and which is viewable from all angles when a tube is placed in a specimen rack.

Clearly, neither of these references discloses or suggests the invention as now claimed and withdrawal of this rejection is requested.

Applicant further notes that new Claims 54-57 have been added to the application, these claims being directed to a method of manufacturing a specimen container in which a colored indicator band is incorporated around the opening of the body. Applicant recognizes that these claims may be subject to restriction.

In view of the foregoing amendments and remarks, Applicant submits that the present application is now in condition for allowance. An early allowance of the application with amended claims is earnestly solicited.

Respectfully submitted,



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